

Southern Rivers

Catchment Management Authority Establishment Team

Review of Rental for Domestic Waterfront Tenancies in NSW
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230



Dear Sir/Madam

Subject: Submission by the Southern Catchment Management Board

The Southern Catchment Management Board has responsibility for the coastal area bounded by Port Hacking in the North and Ulladulla in the South. This area contains a large number of coastal lakes and estuaries, and a substantial number of waterfront tenancies.

The Southern Catchment Management Blueprint is the NSW Cabinet approved plan under which we work. Included in this plan are initiatives for the protection of riparian areas (including coastal riparian areas), biodiversity (including coastal and marine biodiversity), water quality (including estuarine water) and specifically a program for the management of coastal and estuarine areas. A copy of that Blueprint is attached.

There are two issues of relevance to your enquiry, which we wish to raise.

- o The first is the potential to use market instruments to address the natural resource problems that arise from the intensification of foreshore uses as urbanisation increases on the coast.
- o The second is to use the revenue flows from waterfront tenancies to directly address the natural resource challenges that are associated with that intensification of use.

The resource management issues

The resource management problems of construction on foreshores are well known. They include:

- o ecological impacts along the shoreline, such as dislocation of the contiguity of riparian vegetation, with consequent adverse effects on plant and animal biodiversity;
- o ecological impacts within the waterway, including sedimentation and shading and loss of seagrasses;
- social impacts, including loss of community access opportunities and loss of views, as well as issues about privileged access to community owned resources (the waterways)
- secondary impacts, such as the increase in large vessel activity and impacts which is a common consequence of such facilities.

- water quality impacts, due to the loss of the benefits of filtration and trapping by foreshore vegetation.

The most readily documented examples of these issues are with regard to the Hacking, as there has been a series of conferences about these matters (partly sponsored by the Catchment Board, DIPNR and Sutherland Shire Council). (<http://ssec.org.au/EstIndex.html>)

Foreshore facilities frequently add substantially to the value of the properties they abut. As a result, any attempt to constrain or reduce these impacts is hotly contested. The regulatory and zoning frameworks that are typically used often prove to be poor mechanisms to achieve these goals. Again, some of the reasons why are explained in relation to the Hacking. It is for this reason that the Southern CMB is keen to see consideration of market based approaches to managing this difficult issue.

The additional resource management concern is simply cost, and the limited availability of funds. As one can imagine, foreshore works in estuarine areas are very costly, both because of the physical challenges of working alongside or within the ocean, and also because of the high price of the lands concerned. To remediate past problems, and to prevent future one by (for example) purchasing foreshore land, is increasingly difficult. There is a 'natural' link between these issues and foreshore leaseholds as

- 1 . foreshore leases add to the capital values in a coastal or estuarine area;
- 2 . These leases are typically associated with many of the issues requiring management and the expenditure of public funds;
- 3 . the number of these tends to correlate with the increasing intensity of use, and therefore the management challenges in an area.

It is our view that there is a sound case to be made for reflecting this link in the way in which the revenue streams from foreshore leaseholds are dealt with. It is our view that there is a strong case for at least some degree of hypothecation of lease payments to allow for natural resource protection and rectification in the estuaries and coastal lakes where these uses are encouraged by the leasing of public assets.

What is the model we propose

We are currently working on different approaches to this issue, and anticipate that by the time the Tribunal is conducting hearings we will have a better specified model to present.

There are two alternative approaches under consideration.

The first of these is a rental-pricing model, based on the annual rental value of the asset that is used by the tenant. Under such an approach, the rental would reflect a per-metre price equivalent to a set percentage of the foreshore land value in the area where the occupancy exists. Since we have the Valuer General's rating to go on, the only real issue is to determine the appropriate proximity for rate setting, and the appropriate percentage. As the natural resource costs of this use are not insubstantial, we would expect that the percentage would be reasonably high (say 8%). However this matter would need to be carefully considered.

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The second alternative, which is more dynamic and better reflects both the importance of constraining such leaseholds (and clawing back whenever possible), and the desire to ensure that there is market based fair compensation for any loss of private interests, would be to have a revolving auction based approach to pricing, coupled where appropriate with a process of gradual claw-back of excessive licenses. This would in essence be a 'cap and trade' mechanism.

Such an approach could involve the following type of process.

- 1 . Calculate the total area of such occupancies in a given estuary, and estimate the total amount of such occupancies that would be socially and environmentally acceptable (the target limit);
- 2 . establish a cap on total occupancy area, based on the existing occupancy or the target limit (whichever is greater).
- 3 . Have an auction of the occupancy rights for a period, within that cap, based on either annual rent or a renewal price, or some mixture thereof. Successful bidders would be free to trade that interest subject to stringent safeguards on the establishment, use and removal/reinstatement of occupancies.
- 4 Where the total area of occupancies exceed the target limit, at each renewal period a reduction of available licenses will be announced. The unsuccessful bidders would be paid compensation to the level of their bid (possibly with a premium, and with the costs of structures removal and reinstatement of the foreshores to be paid by the relevant agency). They would thereby receive the full amount of the amenity value that they place on the lease or license, and could have little cause of complaint about that compensation. Such a mechanism would also maximise the return to the public purse from the use of this asset.

Such cap and trade and clawback mechanisms are well known in natural resource management, and are proven to be effective when well designed and implemented. We attach a paper from Prof. Robert Marks of the Australian Graduate School of Management that deals with some of the conceptual issues. There are further references and sources available should this be useful to you in considering these matters.

It is our belief that such market based arrangement must be one in which a substantial part of the fees are committed to works within the area where these rents are collected. This is fundamental to the integrity of and community support for such schemes.

The final choice of approach is a matter of both politics and economics, and should be determined after an appropriate enquiry. It is for that reason that we believe the proposed IPART enquiry is a perfect opportunity.

Links to your terms of reference

The enquiry's terms of reference encompass consideration of such matters as these. In particular we draw your attention to the following matters you are charged with considering.

1. A suitable approach for setting domestic waterfront rentals for land owned by the Department of Lands and Waterways Authority.

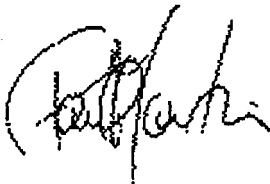
That term of reference does not restrict itself to leases, nor does it prevent consideration of the use of mechanisms where the price is set through a market transaction rather than through administrative action. The use of market mechanisms is encouraged thoroughly COAG, and is part of the contemporary process of seeking to reduce reliance on administration and regulation, to achieve optimal regulation. That literature is, we are sure, well known to the Authority.

2. Mechanisms for streamlining the administration of licences, leases or other instruments administered by the Department of Lands and Waterways Authority. The Tribunal should consider the most appropriate basis of tenure and conditions on these instruments of waterfront tenancies in NSW (eg. lease, licence or any other instrument).

Our proposals directly address this issue, suggesting a different basis for tenure and the forms of condition that would allow the use of markets to facilitate natural resource and economic outcomes.

We would be keen to discuss these matters further, and to outline in more detail the issues and the possible proposals. We trust that these matters will be given sufficient weight in the terms of reference for the IPART enquiry.

Yours truly



Paul Martin
Chairman
Southern Catchment Management Board

3 December 2003